



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO Norfolk Southern Railway Company, Reg. No. 20468

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and the Norfolk Southern Railway Company, for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Norfolk Southern Railway Company," "Norfolk Southern" and "N/S" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the structures at 82 and Cambell, known as the East End Shop located in Roanoke, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the NOx RACT permit, which became effective December 22, 2004.

SECTION C: Findings of Fact and Conclusions of Law

1. Norfolk Southern Railway Company was issued a NOx RACT permit on December 22, 2004.
2. Condition 8 of the permit established a NOx emission limit of 0.4 lbs/MMBtu for each of the three coal-fired boilers.
3. Norfolk Southern Railway Company conducted performance testing on November 14, 16 and 18, 2005 to determine NOx emissions from the boilers. The following table summarizes the results of the emissions testing.

Boiler No.	Allowable Limit	Actual Emissions
#1	0.4 lbs/MMBtu	0.6144 lbs/MMBtu
#2	0.4 lbs/MMBtu	*0.4275 lbs/MMBtu
#3	0.4 lbs/MMBtu	0.4740 lbs/MMBtu

* Boiler #2 is considered to have met the emission limit.

4. Norfolk Southern Railway Company was issued an NOV on January 19, 2006 for failing to demonstrate compliance with Condition 8 of their NOx RACT permit for boilers #1 and #3.
5. Since issuance of the NOV on January 19, 2006, Norfolk Southern maintains that boilers #1 and #3 have operated infrequently, if at all. They further maintain that they have made every effort to only run these boilers when there was a malfunction situation requiring the shutdown of boiler #2.

6. Since issuance of the NOV on January 19, 2006, Norfolk Southern has demonstrated compliance with the NOx emission limit specified in Condition 8 of their NOx RACT permit. Boiler #3 was re-tested on March 10, 2006 and boiler #1 was re-tested on March 17, 2006.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Norfolk Southern, and Norfolk Southern voluntarily agrees to pay a civil charge of **\$5775.00** in settlement of the violations cited in this Order.

1. **\$5775.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include Norfolk Southern's Federal ID number or Social Security Number if Norfolk Southern does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Norfolk Southern, for good cause shown by Norfolk Southern, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Norfolk Southern by DEQ on January 19, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate

enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Norfolk Southern admits the jurisdictional allegations contained herein.
4. Norfolk Southern consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Norfolk Southern declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Norfolk Southern to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Norfolk Southern shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Norfolk Southern shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Norfolk Southern shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Norfolk Southern. Notwithstanding the foregoing, Norfolk Southern agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board approves Norfolk Southern's request to terminate the Order, or upon 30 days written notice to Norfolk Southern. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Norfolk Southern from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Norfolk Southern voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 8-14, 2006.

Steven A. Dietrich
Steven A. Dietrich, Regional Director
Department of Environmental Quality

Norfolk Southern voluntarily agrees to the issuance of this Order.

By: CJ Wehrmeister
Date: 8/10/06

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 10th day of

August, 2006, by CJ Wehrmeister, who is
(CJWEHRMEISTER)

VP Safety & Environmental of Norfolk Southern, on behalf of the Corporation.

Kimberly L. Aldridge
Notary Public

My commission expires: My Commission Expires May 31, 2008.